IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 364 of 2014

Reserved on: 6.10.2026

Date of Decision: 14.10.2026.

Krishan Kumar ...Petitioner

Versus

Vijender Kumar & anr. ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Petitioner	:	Mr. N.K. Tomar, Advocate.
For Respondent No.1	:	Mr C.S. Thakur, Advocate.
For Respondent No.2/State	:	Mr Jitender Sharma, Additional Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 30.7.2014, passed by the learned Sessions Judge, Sirmaur District at Nahan (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 28.11.2013, passed by the learned Judicial Magistrate First Class, Rajgarh, District Sirmaur (learned Trial Court), were upheld. *(The parties*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (in short, the "NI Act"). It was asserted that the complainant and the accused had a friendly relationship with each other for 10 years. The accused approached the complainant in October 2010 and asked him to lend ₹75,000/- for business. The accused assured to return the money within one month. The complainant advanced ₹75,000/- to the accused. The complainant asked the accused to return the money, and the accused issued a cheque for ₹75,000/- drawn on UCO Bank, Rajgarh, to repay the amount. The complainant presented the cheque before his bank, but it was dishonoured with the remark "funds insufficient." The complainant sent a notice to the accused asking him to pay the money within 15 days of the receipt of the notice. However, the accused refused to accept the notice, and the registered cover containing the notice was returned to the complainant. Hence, the complaint was filed

before the Court for taking action against the accused as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Amarjeet Sharma (CW-1) and himself (CW-2) to prove his complaint.

5. The accused denied the complainant's case in his statement recorded under Section 313 of the Code of Criminal Procedure (CrPC). He did not produce any evidence in his defence.

6. The learned Trial Court held that the complainant had advanced money to the accused, who had issued a cheque to repay the debt. There was nothing in the cross-examination of the complainant to show that he did not have the requisite funds to advance the money. The cheque was dishonoured with an endorsement "insufficient funds," and the notice was deemed to be served upon the accused. All the ingredients of the commission of an offence punishable under Section 138 of the NI

Act were duly satisfied. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for six months, pay compensation of ₹75,000/-, and in default of payment of compensation, to undergo further simple imprisonment for three months.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Sirmaur District at Nahan (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the complainant's testimony was reliable. There was nothing in his statement to show that he was making a false statement. The cheque carried with it a presumption that it was issued for consideration to discharge a debt/liability. The accused had failed to rebut the presumption. The cheque was dishonoured with the endorsement "insufficient funds." The notice was sent to the accused, but he refused to accept it, which is deemed service. The learned Trial Court had rightly convicted the accused. The sentence imposed by the learned Trial Court was not excessive,

requiring any interference from the Court. Hence, the appeal was dismissed.

8. Being aggrieved by the judgments and order passed by the learned Courts below, the accused has filed the present revision, asserting that the learned Courts below failed to properly appreciate the material placed before them. The cheque was misused by the complainant by inserting the amount and his name into the body of the cheque. The complainant had failed to prove the financial capacity to lend ₹75,000/- to the accused. There was a material alteration in the cheque, which made it void. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

9. I have heard Mr N.K. Tomar, learned counsel for the petitioner, and Mr C.S. Thakur, learned counsel for respondent No. 1.

10. Mr N.K. Tomar, learned counsel for the petitioner, submitted that the complainant had failed to prove his financial capacity to lend the money to the accused. The body of the cheque was written in a different handwriting than the

signatures of the accused, which corroborates the defence version that the complainant had misused a blank cheque. These aspects were not considered by the learned Courts below. Therefore, he prayed that the present revision be allowed and the judgments and orders passed by the learned Courts below be set aside.

11. Mr C.S. Thakur, learned counsel for respondent No. 1, submitted that the complainant's testimony was not shaken in the cross-examination. The accused had not led any evidence to rebut the presumption attached to the cheque, and the learned Courts below have rightly held that the accused had failed to rebut the presumption attached to the cheque. The cheque was dishonoured with an endorsement "funds insufficient," and the accused failed to repay the money despite the receipt of a valid notice of demand. Therefore, he prayed that the present revision be dismissed.

12. Mr Jitender Sharma, learned Additional Advocate General for respondent No. 2/State, submitted that the dispute is between private parties and the State has no submissions to make.

13. I have given considered thought to the submissions made at the Bar and have gone through the records carefully.

14. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:
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> > "**438. Calling for records to exercise powers of revision.**—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> > *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate

jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High

Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming

to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...”

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of NI Act, while setting aside the impugned order, observed as under:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset

> the concurrent findings of the Trial Court and the Sessions Court."
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> **7.5.** In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

15. The ingredients of the commission of an offence punishable under Section 138 of the NI Act were explained in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485*** as under:

> **5.3.** At this juncture, it is pertinent to highlight the key ingredients as highlighted by this Court in the case of ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745: 2000 SCC (Cri) 546: (2000) 100 COMP CAS 755.***
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> "10. On a reading of the provisions of Section 138 of the NI Act, it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
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> (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. If the aforementioned ingredients are satisfied, then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section, clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

5.4. The ingredients of the offence under Section 138 are as follows:

i. The drawing of a cheque by a person on an account maintained by him with the banker for the payment of any amount of money to another from that account.

ii. The cheque being drawn for the discharge in whole or in part of any debt or other liability.

iii. Presentation of the cheque to the bank within the period of six months or within the period of its validity.

iv. The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

v. A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within thirty days of the receipt of information from the bank in regard to the return of the cheque.

vi. Failure of the drawer of the cheque to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

vii. Filing of the complaint within a month from the date of expiry of the grace period of fifteen days before a Metropolitan Magistrate or a Judicial Magistrate not below first class.

16. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

17. The complainant, Vijander Kumar, reiterated the contents of the complaint in his proof affidavit (Ex. CW-2/A). He stated in his cross-examination that he did not have any relationship with the accused. He volunteered to say that the accused was his friend. He knew the accused for about 10 years. He had handed over the money to the accused on his demand. No document was prepared while advancing the loan. He

volunteered to say that the accused had handed over the cheque to him. There was no person present at the time of handing over the money to the accused. The cheque was filled by the accused in his presence. He admitted that he had taken a loan of ₹5,00,000/- from HP State Cooperative Bank, which had become irregular because of the non-payment of the instalment. He admitted that the bank had filed a case against him for the dishonour of the cheque.

18. His testimony that the accused had handed over the cheque to him was not shaken in the cross-examination. It was nowhere suggested to him that the cheque was not issued by the accused. Even the plea taken by the accused in the revision petition that the body of the cheque was filled by the complainant himself was not suggested to the complainant. It was laid down by the Hon'ble Supreme Court in ***Ravinder Kumar Sharma Vs. State of Assam (1999) 7 SCC 435*** that, generally speaking, while cross-examining a witness, so much of the case as concerns the witness should be put to him. It was observed: -

> 29. The High Court was, in our opinion, wrong in concluding that there was the absence of reasonable and probable cause because the action, in view of the notification of the Central Government, was unauthorised

or illegal. Illegality does not by itself lead to such a conclusion. Further, there is no truth in the appellant's case that on 1-10-1977, at the time of seizure, he informed Defendants 2 and 3 about the gazette notification. The point is that such an assertion was not made even in the bail application moved after arrest. As to the contention that the appellant and the owners of paddy showed permits to Defendants 2 and 3, we do not find sufficient pleading on this aspect. In any case, we find that no question was put when the 2nd defendant was cross-examined. As pointed out by ***Sarkar on Evidence*** (15th Edn., 1999, Vol. 2, p. 2179) in the context of Section 138 of the Evidence Act,

> "Generally speaking, when cross-examining, a party's counsel should put to each of his opponent's witnesses, in turn, so much of his own case as concerns that particular witness or in which he had a share."

19. This position was reiterated in ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268; 2016 SCC OnLine SC 435***, wherein it was observed at page 294: -

> "**15.** Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed; PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure; one is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in ***Bhoju Mandal v. Debnath Bhagat [Bhoju Mandal v. Debnath Bhagat, AIR 1963 SC 1906]***. This Court

repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. The party is required to put his version to the witness. If no such questions are put, the Court will presume that the witness's account has been accepted, as held in ***Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. [Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd., 1957 SCC OnLine P&H 177: AIR 1958 P&H 440***]

16. In ***Maroti Bansi Teli v. Radhabai [Maroti Bansi Teli v. Radhabai, 1943 SCC OnLine MP 128: AIR 1945 Nag 60]***, it has been laid down that the matters sworn to by one party in the pleadings, not challenged either in pleadings or cross-examination by the other party, must be accepted as fully established. The High Court of Calcutta in ***A.E.G. Carapiet v. A.Y. Derderian [A.E.G. Carapiet v. A.Y. Derderian, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359]*** has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court in ***Kuwarlal Amritlal v. Rekhlal Koduram [Kuwarlal Amritlal v. Rekhlal Koduram, 1949 SCC OnLine MP 35: AIR 1950 Nag 83]*** has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court *in* ***Karnidan Sarda v. Sailaja Kanta Mitra [Karnidan Sarda v. Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683***] has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of the opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the

> High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

20. Therefore, this plea cannot be accepted during the revision.

21. In any case, the mere fact that the cheque has not been filled by the accused is not sufficient to absolve him from liability. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138***, that a person is liable for the commission of an offence punishable under section 138 of the Negotiable Instruments Act even if some other person fills the cheque. It was observed:

> "**33.** A meaningful reading of the provisions of the Negotiable Instruments Act, including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
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> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill in the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

> **35.** It is not the case that the respondent accused him of either signing the cheque or parting with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
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> **36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

22. This position was reiterated in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089,*** wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
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> xxxxxx
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> 32. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139.

23. The accused had not disputed his signatures on the cheque in the complainant's cross-examination. Therefore, this part of the affidavit has to be accepted as correct. It was laid down

by the Hon'ble Supreme Court in ***Rajesh Jain vs. Ajay Singh (2023) 10 SCC 148*** that the contention of the accused that a blank cheque leaf was voluntarily signed and handed over by him to the complainant is sufficient to trigger the presumption contained under Section 118(a) and 139 of the NI Act. It was observed:

> **36.** Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents of the cheque, is now sufficient to trigger the presumption.
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> **37.** As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shift the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

24. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> *"ONCE EXECUTION OF A CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE*

> 15. In the present case, the cheque in question has admittedly been signed by the Respondent No. 1-Accused. This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arise against the accused. It is pertinent to mention that observations to the contrary by a two-Judge Bench in ***Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*** have been set aside by a three-Judge Bench in ***Rangappa*** (supra).
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> 16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
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> 17. Needless to mention that the presumption contemplated under Section 139 of the NI Act is rebuttable. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197***].

25. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda*** (supra) that a statutory presumption arises on the admission or proof of the execution of the negotiable instrument, and the burden is upon the accused to rebut this presumption. It was observed:

> **5.7.** A conjoint and harmonious reading of the aforesaid provisions clearly indicates towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either proved or admitted. As

> soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer. Since these presumptions are rebuttable, the accused has the burden of disproving the same by leading evidence, either direct or indirect, to the effect that there did not exist any consideration or debt or that the non-existence of the said debt or consideration is so probable that a prudent man ought to suppose that no consideration or debt existed. However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and, therefore, to disprove the presumptions, something which is probable has to be brought on record for getting the burden of proof shifted back to the complainant. The accused has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

26. Therefore, the learned Courts below had rightly held that the cheque carried a presumption that it was issued for consideration to discharge the debt/liability, and the burden shifted upon the accused to rebut this presumption.

27. The complainant admitted in his cross-examination that he had taken a loan from the HP Cooperative Bank, which had become irregular. It was submitted that this admission makes the complainant's financial capacity highly suspect. This submission cannot be accepted. The cheque was issued in the

year 2010, and the complainant made the statement before the Court in the year 2012. The evidence does not show when the complainant's account had become irregular. Thus, the mere fact that the account of the complainant had become irregular after the issuance of the cheque will not show that he had no financial capacity to pay the money to the accused.

28. In any case, the accused had not sent any reply to the notice issued to him. It was laid down by the Hon'ble Supreme Court in ***Tedhi Singh v. Narayan Dass Mahant*, *(2022) 6 SCC 735: 2022 SCC OnLine SC 302,*** that the complainant is not required to show his financial capacity unless it is challenged by sending a reply to the notice. It was observed at page 740:

> **"10.** The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act, the complainant need not show in the first instance that he had the capacity. The proceeding under Section 138 of the NI Act is not a civil suit. At the time when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines...."

29. This position was reiterated in ***Kuntegowda***(supra) wherein it was observed:

> **6.7.** Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan; therefore, the argument and defence of the accused on this aspect fall flat.

30. In the present case, the accused had not sent any reply to the notice questioning the complainant's financial capacity, and he is not entitled to say that the complainant did not have the financial capacity to advance the loan.

31. The accused has not provided any explanation in his statement recorded under Section 313 of the CrPC as to how the cheque signed by him came into the complainant's possession. Therefore, the accused had failed to rebut the presumption

attached to the cheque, and the learned Courts below had rightly held so.

32. The complainant asserted that the cheque was dishonoured with an endorsement of "funds insufficient." This is duly proved by the statement of Amarjeet Sharma, who stated that the cheque was returned because of insufficient funds. He proved the document showing the deposit of the cheque and its dishonour. There is nothing in his cross-examination to show that he is making a false statement. He is a bank official and has no interest in deposing against any person; hence, his testimony proves that the cheque was dishonoured with an endorsement "insufficient funds."

33. The complainant asserted that he had sent a notice by means of a registered letter to the accused. The registered envelope (Ext.CW-2/D) bears an endorsement that the addressee had refused to accept the letter; hence it was returned to the sender. The learned Courts below had rightly held that the refusal to accept the registered cover would amount to deemed service. It was laid down by the Hon'ble Supreme Court in ***N. Parameswaran Unni v. G. Kannan, (2017) 5 SCC 737: 2017 SCC OnLine SC 293***, that

when a notice is returned with endorsement "refused", it is deemed to be served. It was observed at page 741:

> "**15.** This Court in a catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed [***Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647; State of M.P. v. Hiralal, (1996) 7 SCC 523*** and ***V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774: 2005 SCC (Cri) 393***] ...."

34. Therefore, the notice is deemed to be served upon the accused.

35. The accused did not claim that he had paid the money to the complainant after the receipt of the notice. Therefore, the learned Courts below had rightly held that all the ingredients of the commission of an offence punishable under Section 138 of the NI Act were duly satisfied.

36. The learned Trial Court had sentenced the accused to undergo simple imprisonment for six months and pay compensation of ₹75,000/-, which is the cheque amount. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; (2019) 2 SCC (Cri) 40; (2019) 2 SCC (Civ) 309; 2019 SCC OnLine SC 138,*** that the penal provision of Section 138 is deterrent in nature. It was observed at page 203:

> "6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same."

37. Keeping in view the deterrent nature of the punishment, a sentence of six months cannot be said to be excessive.

38. The accused had issued the cheque in November 2010, and the learned Trial Court imposed the sentence on 28.11.2013 after the lapse of three years. It was laid down by the Hon'ble Supreme Court in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75,*** that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed at page 291: -

> 19. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach

> towards awarding compensation, and unless there exist special circumstances, the courts should uniformly levy fines up to twice the cheque amount along with simple interest @ 9% p.a. [*R. Vijayan v. Baby, (2012) 1 SCC 260, para 20: (2012) 1 SCC (Civ) 79: (2012) 1 SCC (Cri) 520*]"

39. The complainant was deprived of the interest which he could have gained by investing the money. He had to engage a counsel to prosecute the complaint before the learned Trial Court, and he was entitled to be compensated for it; however, the learned Trial Court had not awarded any compensation, but only awarded the cheque amount, which is inadequate. However, no appeal was preferred against the inadequacy of sentence, and it is impermissible to interfere with the sentence imposed by the learned Trial Court.

40. The learned Trial Court had imposed a sentence of imprisonment in default of payment of compensation. It was submitted that this is impermissible. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230; (2010) 3 SCC (Civ) 744; (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612,*** that the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> "**26.** From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person to bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above; otherwise, the very purpose of granting an order of compensation would stand defeated."

41. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013; 2012 SCC OnLine SC 486,*** wherein it was observed at page 729:

> "**29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief to alleviate his grievance. In terms of

Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation, as it can be done in case of default in payment of a fine under Section 64 IPC. It is obvious that in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the above-mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

42. Therefore, there is no infirmity in the sentence in default of payment of compensation.

43. No other point was urged.

44. In view of the above, the present revision fails, and it is dismissed. All the pending applications, if any, also stand disposed of.

45. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

14th October, 2026
(Chander)